

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.02.2005

Coram:

The Honourable Mr.MARKANDEY KATJU, Chief Justice
and

The Honourable Mr.Justice D.Murugesan

Writ Appeal No. 475 of 2000

The Managing Director
Tamil Nadu State Transport
Corporation (Madurai Division IV) Ltd.,
Bye-pass Road,
Collectorate Post,
Dindigul. ... Appellant/ Respondent

vs.

P. Ellappan
Kondamma Naickenpatti
Kovilur (via)
Vedasandur Taluk,
Dindigul. ... Respondent / Petitioner

Appeal filed under Clause 15 of the Letters Patent against
the order passed in W.P.No. 17496 of 1999 dated 10.12.1999.

For Appellant ::: Mr.S.Jayaraman

For Respondent ::: Mr.R.Malaichamy

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J U D G M E N T
THE HONOURABLE THE CHIEF JUSTICE

This writ appeal has been filed against the impugned
judgment of the learned single Judge dated 10.12.1999.

2. We have heard the learned counsel for the parties, and
have perused the records.

3. The writ petitioner had alleged in paragraph-2 of his affidavit that he joined the service of the respondent transport corporation (appellant in this appeal) in the year 1981 as a driver. As on 25.10.1991 he had put more than 10 years of service. In paragraph-3 he has alleged that on 25.10.1991, while he was driving a bus bearing registration No. TPC 7221 towards Thethupatti, a lorry, which was coming behind the bus, tried to overtake the bus and in that process, there was an accident resulting in multiple injuries to the writ petitioner and the conductor of the bus and to some passengers. The writ petitioner was admitted in the hospital as an inpatient for 68 days and he was discharged without being completely cured. It is alleged by the petitioner that the respondent transport corporation did not take any steps to help him in medical treatment nor allowance was given to him. He had to spend his own money. It is alleged that the trial court has held that the accident occurred due to the rash and negligent driving of the lorry driver.

4. The respondent transport corporation (appellant in this appeal) gave an alternative employment to the writ petitioner and posted him as a Cashier at Vendasandur Branch. It is alleged that the petitioner was compelled to join as a Driver once again, to which the petitioner pleaded inability, as the petitioner could not drive the vehicle, which he was driving before. The petitioner was referred to a medical board, which gave a report stating that he was medically unfit to drive a bus. It is alleged that the corporation instead of allowing the petitioner to continue to work as a Cashier dismissed him from service with effect from 17.8.93. It is alleged that subsequently, the respondent transport corporation appointed the writ petitioner as a Helper afresh. The writ petitioner made several representations to consider his past service for seniority and other service benefits and to give him pay protection, but to no avail. He was drawing salary of Rs.5200/- per month, but if pay protection is given, he would draw not less than Rs.7000/- per month. It is alleged that similarly placed persons were given continuity in service and pay protection. The representation of the petitioner was rejected by order dated 31.7.1999, and hence the writ petition.

5. The petitioner's writ petition was allowed and the impugned order of the respondent was quashed with a direction to the respondent to treat the petitioner as not having been terminated and give him pay protection in the employment in light duty, and pay the difference of scale of pay and also revise the present scale of pay by giving pay protection.

6. The appellant/ transport corporation has submitted that the writ petitioner was given medical treatment for 68 days as inpatient and the appellant gave him leave with wages for the entire period. Since the writ petitioner was not completely fit for the post of driver after the accident, the transport corporation referred him to a medical board, which gave the report dated 19.7.93 stating that the writ petitioner was not fit for the post of driver for heavy vehicles. The transport corporation issued a show cause notice to the writ petitioner referring to the report of the medical board and directed the writ petitioner to show cause as to why he should not be discharged from service on medical grounds. The writ petitioner submitted his reply on 11.8.1993 requesting the transport corporation to give him alternate employment with continuity of service. The transport corporation discharged him from service on medical grounds by order dated 17.8.93, but the transport corporation offered him alternative employment as per G.O.Ms.No.746, Transport Department dated 2.7.1981. The said G.O states that all the workers in the State Transport Corporation, who are declared medically unfit for continuance in service in the same post on medical grounds while in service, because of eye defect or any other ailment, shall be discharged on medical grounds and their service benefits will be settled. As per the G.O, the worker should be subsequently provided with alternative employment in a post like Helper depending upon his qualification and experience and suitability for the new post without consulting the employment exchange. The G.O further states that such a worker should be appointed as fresh entrant only in the scale of pay or consolidated pay admissible to the new post, and his service terminated on the date on which he attains superannuation.

7. The writ petitioner accepted the alternative employment and joined duty as Helper on 8.9.1993. He was getting Rs.500/- less than what he was getting as a driver. He worked on this alternative employment for six years without raising any protest whatsoever. However, in the year 1999, he filed a writ petition seeking parity in pay and for consideration of his representation. On 24.6.99, this Court directed the management to consider the representation of the writ petitioner and pass appropriate orders within six weeks. Pursuant to the order of the High Court, the appellant/management by order dated 31.7.99 rejected the representation of the writ petitioner stating that he was given alternative employment as per G.O.Ms.No.746 dated 2.7.1981. Aggrieved against the same, the workman filed the writ petition, which was allowed by this Court by the impugned judgment.

8. In our opinion, the impugned judgment cannot be sustained and is liable to be set aside on several grounds. Firstly, the writ petition should not have been entertained at all, as it was filed belatedly after six years and hence, should have been dismissed straight away on the ground of laches without going into the merits.

9. It is well settled that if there is undue delay on the part of the petitioner in filing a writ petition, he would not be entitled to the discretionary relief under Article 226 of the Constitution of India.

10. In *State of Maharashtra v. Digambar*, AIR 1995 SC 1991 the Supreme Court observed (vide paragraph-12) that it is well settled by the decisions of the Court that no person is entitled to obtain equitable relief under Article 226 of the Constitution of India if his conduct is blameworthy because of laches, undue delay, acquiescence, waiver and the like.

11. Similarly in *Municipal Council, Ahmednagar v. Shah Hyder Beig*, AIR 2000 SC 671 (vide paragraphs - 17 & 18) it was held that when there is inordinate delay in filing a writ petition, the High Court in its discretionary powers under Article 226 of the Constitution of India can dismiss it on this ground without going into the merits.

12. In *Gian Singh Mann v. P & H High Court*, AIR 1980 SC 1894, a petition under Article 226 was filed by the petitioner about 11 years from the date on which he claimed promotion. The Supreme Court held that such inordinate delay could not be overlooked on the ground that the petitioner was making successive representations.

13. In *J.N.Maltiar v. State of Bihar*, AIR 1973 SC 1343 it was held that where the petitioner, a dismissed Government servant, after being informed that his services were terminated for misconduct, spent about three years in sending memorials to the Government, a remedy not provided by law, the High Court was justified in rejecting the petition on the ground of delay.

14. In *Rajalakshmiah v. State of Mysore*, AIR 1967 SC 993 (vide paragraph - 13) the Supreme Court held that the appellants were guilty of laches because after the impugned order was passed in 1950, they should have filed a writ petition within a reasonable time thereafter. Merely because the Chief Engineer had espoused their cause and was writing letters from time to time to the State Government to do something for them did not mean that they could rest upon their oars if they really had grievance.

15. In *Srinivasa Rao v. State of Karnataka*, (1996) 9 SCC 616 the Supreme Court held that the writ petition was rightly dismissed by the High Court as belated, since it was filed after a long delay of about 15 years.

16. Thus, it is well settled that writ jurisdiction being discretionary jurisdiction cannot be invoked by a party who approaches the High Court after unreasonable delay. (vide *S.A.Rasheed v. Director of Mines and Geology*, AIR 1995 SC 1739)

17. No doubt there is no specific limitation provided for under Article 226 for filing a writ petition. However, the principle of laches i.e. undue delay certainly applies to writ jurisdiction. The High Court has to exercise its writ jurisdiction on settled legal principles, and one of these legal principles is that a writ petition is liable to be dismissed if the petitioner has come to the High Court after undue delay, as has happened in this case.

18. We may also clarify that the pursuit of a departmental representation or correspondence is no ground for condoning the delay in approaching the High Court. vide (*Rajalakshmiah v. State of Mysore* (supra), *J.N.Maltiar v. State of Bihar* (supra), *Gian Singh Mann v. P & H High Court* (supra) etc. It is only when the representation is a statutory representation that the time spent in pursuing it can be taken into consideration in deciding whether the petitioner has approached the High Court after undue delay. We cannot agree with the submission that the delay in filing the writ petition should be condoned merely because the petitioner was filing representations (unless it was a statutory representation), otherwise the petitioner can approach the High Court even after 25 years saying that he was filing representations during these 25 years.

19. Secondly the writ petitioner accepted the alternative employment as Helper without any protest, and hence in our opinion he is estopped from challenging the said employment and the pay scale attached to that alternative employment particularly after such a long period. In fact the workman received compensation of Rs.45,000/-, as ordered by the Motor Accidents Claims Tribunal, Dindigul.

20. In our opinion, the appellant transport corporation had been already lenient to the writ petitioner by giving him an alternative employment, as per G.O.Ms.No.746, Transport Department dated 2.7.1981.

21. On a similar ground, a Division Bench of this Court in *The Management of D.A.T.C Limited v. The Presiding Officer*, (2002) 12 M.L.J 61 has upheld the discharge on medical grounds.

22. As regards the entitlement of benefit to the petitioner under *The Persons with Disabilities* (Equal

Opportunities, Protection of Rights and Full Participation) Act, 1995, we are of the opinion that the writ petitioner cannot get any benefit from the same. As already observed above, the writ petitioner had already availed the benefit of G.O.Ms.No.746, Transport Department dated 2.7.1981 and he was given alternative employment and he had also joined the said employment on 8.9.93. His termination of service on medical grounds and subsequent reemployment as per G.O.Ms.No.746, Transport Department dated 2.7.1981 was before the enactment of the aforesaid Act of 1995. The writ petitioner having availed the benefit of alternative employment and worked for six years cannot be allowed to suddenly raise a new controversy, particularly when the Act of 1995 was not even in existence at the relevant time.

23. The decision of the Supreme Court in Narendra Kumar Chandla v. State of Harayana (AIR 1995 SC 519) is in our opinion distinguishable for the reasons already mentioned above, namely, that in the present case the writ petitioner had accepted the alternative employment as Helper without protest in 1993 and had worked in the said post for six years. Hence, he cannot be allowed to rake up a controversy at such a belated stage. Writ jurisdiction is discretionary jurisdiction vide Chandra Singh v. State of Rajasthan and Another, JT 2003 (6) SC 20, Ramniklal N.Bhutta v. State of Maharashtra, 1997 (1) SCC 134 (vide paragraph-10) etc, and will not be exercised if there is undue delay.

24. It is well settled that writ jurisdiction is discretionary jurisdiction. Hence, even if there is violation of law, the High Court is not bound to interfere. The Supreme Court in Chandra Singh v. State of Rajasthan and Another (supra) held as under:-

" Issuance of a writ of Certiorari is a discretionary remedy (see Champalal Binani v. CIT, West Bengal, AIR 1970 SC 645). The High Court and consequently this Court while exercising its extraordinary jurisdiction under Articles 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant."

In our opinion, this was not a fit case for exercise of discretion under Article 226 of the Constitution.

25. For the reasons stated above, the appeal is allowed. No costs. The impugned judgment is set aside and the writ petition is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

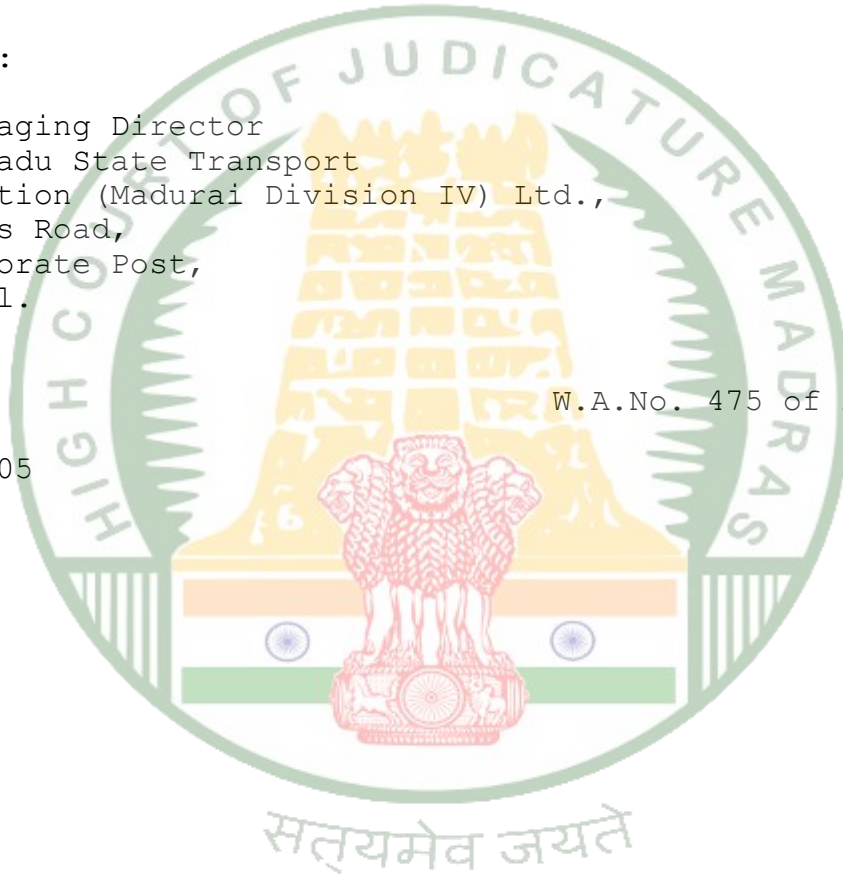
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Copy to:

The Managing Director
Tamil Nadu State Transport
Corporation (Madurai Division IV) Ltd.,
Bye-pass Road,
Collectorate Post,
Dindigul.

NG (CO)
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W.A.No. 475 of 2000



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